NEW MEXICO
ENVIRONMENT DEPARTMENT

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Original via FedEx-Copy via Electronic Mail

July 15, 2020

Mr. Charles Maguire, Director
Water Quality Protection Division (6WD)
U. S. Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, Texas 75202

Re: Revoke and Reissue State Certification for Westmoreland San Juan Mining LLC, La Plata Mine – NPDES Permit No. NM0029505

Dear Director Maguire:

In order to allow for less stringent conditions from the draft permit, NMED finds it necessary to revoke the previous CWA Section 401 Certification of the proposed National Pollutant Discharge Elimination System (NPDES) permit: Westmoreland San Juan Mining LLC, La Plata Mine – NPDES Permit No. NM0029505.

In NMED's original certification, it reserved the right to amend or revoke the certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan. As such, a revised and reissued 401 State Certification is needed to address the inclusion of the new Alternate Effluent Limit (AFL) in the permit. The proposed permit language including the compliance schedule is sufficient to comply with New Mexico State law and the applicable portions of the Clean Water Act.

Comments and conditions, if any, are enclosed on separate sheets.

The U.S. Environmental Protection Agency (EPA) proposes to regulate discharges under the above referenced NPDES Individual permit. A state Water Quality Certification is required by the federal Clean Water Act (CWA) Section 401 to ensure that the action is consistent with state law (New Mexico Water Quality Act, New Mexico Statutes Annotated (NMSA) 1978, §§ 74-6-1 to -17) and complies with State of New Mexico Water Quality Standards, the Water Quality Management Plan and Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy.

Pursuant to State regulations for permit certification (Section 20.6.2.2001 New Mexico Administrative Code (NMAC)), EPA jointly with the New Mexico Environment Department (NMED) issued a public notice of the draft permit and announced a public comment period posted on the NMED web site at https://www.env.nm.gov/surface-water-quality/public-notices/ on February 29, 2020. The NMED public comment period ended on May 31, 2020. NMED did not receive any comments.

Sincerely,

Shelly Lemon Digitally signed by Shelly Lemon
Date: 2020.07.15 12:08:22 -06'00'

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

cc: (w/ enclosures)
Ms. Evelyn Rosborough, USEPA (6WDPN) via e-mail
Mr. Brent Larsen, USEPA (6WDPE) via e-mail
Mr. Quang Nguyen, USEPA (6WDPE) via e-mail
Mr. Daniel Mumm, Westmoreland San Juan Mining, La Plata Mine, via e-mail

Mr. Ken Mc Queen, Regional Administrator
Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, TX 75202

July 15, 2020

STATE CERTIFICATION

RE: Westmoreland San Juan Mining LLC, La Plata Mine – NM0029505

Dear Regional Administrator McQueen:

The Cabinet Secretary of the New Mexico Environment Department (NMED) has delegated signatory authority for state certifications of federal Clean Water Act permits to the Surface Water Quality Bureau Chief. NMED examined the proposed NPDES permit referenced above. The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and water quality management plan and will be in compliance with the antidegradation policy.

The State of New Mexico

(X) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law

( ) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit (see attachments)

( ) denies certification for the reasons stated in the attachment

( ) waives its right to certify

In order to meet the requirements of State law, including water quality standards and appropriate basin plan as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent.

The Department reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

Please contact Sarah Holcomb at (505) 827-2798, if you have any questions concerning this certification. Comments and conditions pertaining to this draft permit are attached.

Sincerely,

Shelly Lemon Digitally signed by Shelly Lemon
Date: 2020.07.15 12:09:04 -06'00'

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

State of New Mexico Comments on the Proposed NPDES Permit
Westmoreland San Juan Mining LLC La Plata Mine
NM0029505
July 15, 2020

The following conditions are necessary to ensure that discharges allowed under the National Pollutant Discharge Elimination System (NPDES) permit protect State of New Mexico surface water quality standards (WQS) adopted in accordance with Section 303 of the Clean Water Act (CWA) and the New Mexico Water Quality Act [NMSA 1978, §§ 74-6-1 to -17]. State of New Mexico (State) WQS are published in Title 20, Chapter 6, Part 4 of the New Mexico Administrative Code (20.6.4 NMAC), *Standards for Interstate and Intrastate Surface Waters*, as amended by the New Mexico Water Quality Control Commission (WQCC) and approved by the U.S. Environmental Protection Agency (EPA) on September 12, 2018. Additional state WQS are published in Title 20, Chapter 6, Part 2 of the New Mexico Administrative Code (20.6.2 NMAC), *Ground and Surface Water Protection*, as amended by the WQCC on December 21, 2018.

NPDES regulations at 40 CFR 122.44(d)(l)(i) require that permit "…limitations must control all pollutants or pollutant parameters... which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard…"

40 CFR Part 124.53(e) states that, "State certification shall be in writing and shall include: (1) Conditions which are necessary to assure compliance with the applicable provisions of CWA Sections 208(e), 301, 302, 303, 306 and 307 and with appropriate requirements of State law…"

Conditions of Certification:

none

Comments that are not Conditions of Certification:

Comment #1
On April 12, 2019, EPA approved the official name change of the permittee from San Juan Coal Company to Westmoreland San Juan Mining LLC. Because the draft permit still lists the permittee as San Juan Coal Company, the updated permittee name should be reflected in the final permit.

Background for Comment #2
20.6.4.900 NMAC - Criteria Applicable to Existing, Designated or Attainable Uses:
…
(I) Hardness-dependent acute and chronic aquatic life criteria for metals are… expressed as a function of dissolved hardness (as mg CaCO3/L). With the exception of aluminum, the equations are valid only for dissolved hardness concentrations of 0-400 mg/L. For dissolved hardness concentrations above 400 mg/L, the criteria for 400 mg/L apply. For aluminum the equations are valid only for dissolved hardness concentrations of 0-220 mg/L. For dissolved hardness concentrations above 220 mg/L, the aluminum criteria for 220 mg/L apply.

(1) ***Acute aquatic life criteria for metals****: The equation to calculate acute criteria in µg/L is exp(mA[ln(hardness)] + bA)(CF). Except for aluminum, the criteria are based on analysis of dissolved metal. For aluminum, the criteria are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department. The EPA has disapproved the hardness-based equation for total recoverable aluminum in waters where the pH is less than 6.5 in the receiving stream for federal purposes of the Clean Water Act. The equation parameters are as follows:*

Metal	m_A	b_A	Conversion factor (CF)
Aluminum (Al)	1.3695	1.8308	
Cadmium (Cd)	0.8968	-3.5699	1.136672-[(ln hardness)(0.041838)]
Chromium (Cr) III	0.819	3.7256	0.316
Copper (Cu)	0.9422	-1.7	0.96
Lead (Pb)	1.273	-1.46	1.46203-[(ln hardness)(0.145712)]
Manganese (Mn)	0.3331	6.4676	
Nickel (Ni)	0.846	2.255	0.998
Silver (Ag)	1.72	-6.59	0.85
Zinc (Zn)	0.9094	0.9095	0.978

For waters with a pH of less than 6.5, the previously approved acute dissolved aluminum criterion of 750 ug/L applies for CWA purposes. (https://www.epa.gov/wqs-tech/water-quality-standards-regulations-new-mexico)

*(2) **Chronic aquatic life criteria for metals**: The equation to calculate chronic criteria in µg/L is exp(mC[ln(hardness)] + bC)(CF). Except for aluminum, the criteria are based on analysis of dissolved metal. For aluminum, the criteria are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department. The EPA has disapproved the hardness-based equation for total recoverable aluminum in waters where the pH is less than 6.5 in the receiving stream for federal purposes of the Clean Water Act. The equation parameters are as follows:*

Metal	mC	bC	Conversion factor (CF)
Aluminum (Al)	1.3695	0.9161	
Cadmium (Cd)	0.7647	-4.218	1.101672-[(ln hardness)(0.041838)]
Chromium (Cr) III	0.819	0.6848	0.86
Copper (Cu)	0.8545	-1.702	0.96
Lead (Pb)	1.273	-4.705	1.46203-[(ln hardness)(0.145712)]
Manganese (Mn)	0.3331	5.8743	
Nickel (Ni)	0.846	0.0584	0.997
Zinc (Zn)	0.9094	0.6235	0.986

For waters with a pH of less than 6.5, the previously approved chronic dissolved aluminum criterion of 87 ug/L applies for CWA purposes (see https://www.epa.gov/wqs-tech/water-quality-standards-regulations-new-mexico).

Comment #2

Monitoring requirements for pH and dissolved hardness for Outfalls 015, 016 and 028 should be included in order to evaluate compliance with state water quality standards.

Background for Comment #3

Westmoreland San Juan Mining LLC commented on the proposed permit that they reported that samples collected on July 17, 2018 (as described in the July 31, 2018 letter to EPA) is not representative of the area normal conditions. The operator implements a site-specific Sediment Control Plan(approved by the Surface Mining Control and Reclamation Act (SMCRA) permitting authority, the New Mexico Mineral & Mining Division (MMD)) that is designed to restore the natural hydrologic balance in reclaimed areas and allows water to be put to a beneficial use downstream. Best management practices (BMPs) are identified in the Sediment Control Plan, and are designed to reduce, if not completely eliminate, pre-existing

environmental problems, particularly water pollution. The types and scope of the BMPs are tailored to specific operations based largely on pre-existing site conditions, hydrology, and geology. BMPs are designed to function in a physical and/or geochemical manner to reduce the pollution loadings. As with all BMPs, verification of proper implementation is crucial to effective control or remediation of the discharge pollution loadings. Monitoring of water quality and quantity will be the truest measure of BMP effectiveness. The BMPs in the Sediment Control Plan are designed for a 10-year, 24-hour event.

Due to the carrying capacity of the approved BMPs, EPA plans to modify the proposed permit to have an Alternate Effluent Limit (AEL) for rainfall events over 2.60 inches, (100-year, 24-hour storm event). Footnote number five states, "The AEL (Alternate Effluent Limit) is the minimum rainfall event necessary for alternate effluent limitations to apply. The permittee must show that the increase in discharge resulted from a precipitation event. For this purpose, the permittee may maintain a precipitation gage at the facility or rely on data from the nearest weather station with a precipitation gage."

Comment #3

NMED agrees that the less stringent AEL for discharges over the 100-year 24-hour event size will still be protective of water quality if the BMPs are maintained to operate as designed.

Please clarify footnote number five to describe that the AEL replaces the standard limit with BMP inspection and maintenance.

Please add language describing that the permittee is required to report discharges that resulted from rainfall events over 2.60 inches, (100-year, 24-hour storm event) and inspect and repair BMPs. If discharges occur, they must immediately take all reasonable steps to address BMP conditions, including cleaning up any contaminated surfaces so the material will not discharge in subsequent storm events. When the BMP requires a new or replacement control or significant repair, install the new or modified control and make it operational, or complete the repair, by no later than seven (7) calendar days from the time of discovery. If it is infeasible to complete the installation or repair within seven (7) calendar days, you must document and report to EPA and NMED why it is infeasible to complete the installation or repair within the 7-day timeframe and document your schedule for installing the stormwater control(s) and making it operational as soon as feasible after the 7-day timeframe.